

**IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE**

FILED

January 15, 1997

**Cecil W. Crowson
Appellate Court Clerk**

CHARLES JOSEPH McKEON,)
)
Plaintiff/Appellant,)
)
VS.)
)
STATE OF TENNESSEE,)
)
Defendant/Appellee.)

Tennessee Claims Commission
No. 96000359

Appeal No.
01A01-9608-BC-00359

APPEAL FROM THE TENNESSEE CLAIMS COMMISSION
AT NASHVILLE, TENNESSEE

THE HONORABLE W.R. BAKER, COMMISSIONER

For the Plaintiff/Appellant:

James L. Harris
Nashville, Tennessee

For the Defendant/Appellee:

Charles W. Burson
Attorney General and Reporter

James C. Floyd
Assistant Attorney General

AFFIRMED AND REMANDED

WILLIAM C. KOCH, JR., JUDGE

OPINION

This appeal involves a wrongful discharge claim filed by the former executive director of prison industries. The Tennessee Claims Commission granted the State's motion for summary judgment on the ground that the claimant had voluntarily resigned. The claimant asserts on this appeal that the commission should not have granted the summary judgment because of the existence of material factual disputes concerning whether he had, in fact, resigned. We affirm the claims commissioner's decision because the only reasonable conclusion to be drawn from the undisputed facts is that the claimant resigned from his position.

I.

The Tennessee Rehabilitative Initiative in Correction Board (TRICOR) is the state agency charged with the responsibility to manage and operate Tennessee's prison industry program. It is affiliated with the Department of Correction for administrative purposes. On September 1, 1994, TRICOR hired Charles J. McKeon as its executive director. Mr. McKeon served at TRICOR's pleasure. Tenn. Code Ann. § 41-22-407(b) (Supp. 1996).

Mr. McKeon's tenure was relatively brief. On June 1, 1994, he informed TRICOR's chairperson, Douglas E. Jones, that he had decided to resign. Three days later, he confirmed this conversation with a memorandum to Mr. Jones conceding "that we as a team and as individuals have failed." He also requested a "severance package of three months" because he and his family would have virtually no income during the transition period until he found a new position. Mr. Jones responded to this memorandum on June 12, 1995, accepting Mr. McKeon's resignation and declining to provide him with any sort of severance benefits. The Department of Personnel's records reflect that Mr. McKeon had "resigned - not in good standing."

Mr. McKeon thereafter filed a claim with the Division of Claims Administration alleging that he had been wrongfully terminated and that he was entitled to back pay in accordance with Tenn. Code Ann. § 9-8-307(a)(1)(L) (Supp. 1996) (breach of written contract) and Tenn. Code Ann. § 9-8-307(a)(1)(N) (Supp. 1996) (negligent deprivation of statutory rights). The State replied by moving to dismiss the claim on several grounds including Mr. McKeon's status as an at-will employee and the fact that he had resigned. The claims commissioner dismissed the claim on the ground that Mr. McKeon's "discharge was brought about by his own resignation before the meeting in question and was not effected by that meeting."

II.

We turn first to the applicable standard of review. The claims commission's procedural rules are similar to the Tennessee Rules of Civil Procedure.¹ Accordingly, except in circumstances when these two bodies of rules differ, the precedents construing the Tennessee Rules of Civil Procedure provide helpful guidance for construing the commission's procedural rules. *Hembree v. State*, App. No. 01A01-9306-BC-00279, 1995 WL 50066, at *1 (Tenn. Ct. App. Feb. 8, 1995), *aff'd*, 925 S.W.2d 513 (Tenn. 1996).

The State's motion with regard to this claim tracked Tenn. R. Civ. P. 12 and 56. Since the resolution of the motion required the claims commissioner to consider materials beyond the parties' pleadings, both the claims commissioner and this court must treat it as one seeking a summary judgment. *Kane v. State*, App. No. 89-75-II, 1989 WL 13963 at *1-2 (Tenn. Ct. App. Nov. 15, 1989) (No Tenn. R. App. P. 11 app. filed). Thus, our task is to review the record to determine whether the requirements for granting a summary judgment have been met. *Payne v. Breuer*, 891 S.W.2d 200, 201 (Tenn. 1994); *Cowden v. Sovran Bank/Central South*, 816 S.W.2d 741, 744 (Tenn. 1991). A summary judgment is warranted only when there exists no material factual dispute concerning the claim or defense asserted in the motion, *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn.

¹See Tenn. Code Ann. § 9-8-403(a)(1) (1992); Tenn. Comp. R. & Regs. r. 0310-1-1-.01 (1992).

1993), and when the moving party is entitled to a judgment in its favor as a matter of law. *Anderson v. Standard Register Co.*, 857 S.W.2d 555, 559 (Tenn. 1993).

Decisions to grant a summary judgment do not enjoy a presumption of correctness on appeal. *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995). The reviewing courts must view the evidence in the light most favorable to the non-moving party, *Haynes v. Hamilton County*, 883 S.W.2d 606, 613 (Tenn. 1994), and we must draw all reasonable inferences in the non-moving party's favor. *Pittman v. Upjohn Co.*, 890 S.W.2d 425, 428 (Tenn. 1994). We should affirm a summary judgment only if the undisputed facts and the conclusions reasonably drawn from the facts support the conclusion that the moving party is entitled to a judgment as a matter of law. *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995); *Carvell v. Bottoms*, 900 S.W.2d at 26.

III.

The evidence offered by the State to support its motion demonstrates that Mr. McKeon resigned from his position as TRICOR's executive director on June 1, 1995. When confronted with this uncontradicted evidence, Mr. McKeon should not have relied on the allegations and denials in his pleadings to stave off the State's motion. *Byrd v. Hall*, 847 S.W.2d at 211; Tenn. R. Civ. P. 56.05. He should have offered evidence of his own demonstrating that the material facts are in dispute or that the State, for some other reason, is not entitled to a judgment as a matter of law. Mr. McKeon provided no such evidence. Thus, the undisputed evidence is that Mr. McKeon resigned from state service. Since he resigned, he has no basis to assert that he was wrongfully terminated or that TRICOR somehow negligently deprived him of a statutory right at its meeting held after he had resigned.

IV.

The claims commissioner's order dismissing Mr. McKeon's claim is affirmed and the case is remanded to the claims commission for whatever other proceedings may be required. The costs of this appeal are taxed to Charles J. McKeon for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., JUDGE

CONCUR:

HENRY F. TODD, P.J., M.S.

SAMUEL L. LEWIS, JUDGE